

1  
2  
3  
4 JUVENTINO RODARTE,  
5 Plaintiff,  
6 v.  
7  
8 ALAMEDA COUNTY, et al.,  
9 Defendants.  
10  
11

12 Case No. 14-cv-00468-KAW  
13  
14

15 **ORDER REGARDING JOINT  
DISCOVERY LETTER BRIEF**

16 Re: Dkt. No. 31  
17  
18

19 The parties in the above-captioned case filed a joint discovery letter brief concerning seven  
20 subpoenas that seek a variety of information, including information about the plaintiff's  
21 immigration status. For the reasons set forth below, the subpoenas are quashed.

22 **I. BACKGROUND**

23 **A. Factual background<sup>1</sup>**

24 Juventino Rodarte ("Plaintiff") filed his complaint against Alameda County, Gregory J.  
25 Ahern ("Ahern"), Raymond P. Kelly ("Kelly"), and Derek D. Thoms ("Thoms," collectively,  
26 "Defendants") on January 30, 2014. (Compl., Dkt. No. 1.) He asserts causes of action for  
27 violations of his Fourth and Fourteenth Amendment rights, pursuant to 42 U.S.C. § 1983, a claim  
for municipal and supervisory liability under *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658 (1978),  
and various state law claims, including assault and battery. (*Id.* ¶¶ 45-94.)

28 These claims arise from events that occurred on March 23, 2013. (*Id.* ¶ 9.) Daniel Furtado  
("Furtado") noticed a motion light turn on outside his secured apartment complex, the same  
apartment complex where Plaintiff resides. (*Id.* ¶ 10.) Furtado did not observe anything outside,

---

<sup>1</sup> This background is based on the factual allegations in Plaintiff's complaint.

1 but he called the police. (*Id.* ¶ 11.) Thoms and his partner, T. Nelson ("Nelson") responded to the  
2 call at approximately 2:21 a.m. (*Id.* ¶ 12.) They had a K-9 with them. (*Id.* ¶ 12.) Kelly and  
3 another deputy, C. Kolos ("Kolos") also responded to the call. (*Id.*)

4 The deputies entered the secured apartment complex, cleared the parking garage then  
5 cleared the first floor. (*Id.* ¶¶ 13, 14.) They proceeded to the second floor of the complex, where  
6 they encountered Plaintiff, who was at his apartment door with his keys in hand. (*Id.* ¶¶ 15, 16.)  
7 Kelly told Thoms that Plaintiff had a metal object in his hands, and they commanded the K-9 to  
8 "apprehend" Plaintiff. (*Id.* ¶¶ 20, 21.) The K-9 bit Plaintiff on his left calf, and Plaintiff lost  
9 consciousness. (*Id.* ¶¶ 23, 24.) Nelson handcuffed Plaintiff, and Thoms ordered the K-9 to release  
10 her bite once Plaintiff was in handcuffs. (*Id.* ¶¶ 25, 26.) While Plaintiff was in custody, Thoms  
11 identified the metal object in Plaintiff's hands as a set of house keys. (*Id.* ¶ 27.)

12 Paramedics Plus transported Plaintiff to Eden Medical Center. (*Id.* ¶ 21.) When Plaintiff  
13 regained consciousness, he was handcuffed to a hospital bed. (*Id.* ¶ 32.) Thoms and another  
14 deputy, A. Holmes ("Holmes") would not release Plaintiff to allow him to make a phone call until  
15 he signed a confession Thoms had prepared. (*Id.* ¶ 33.) Thoms placed Plaintiff under arrest and  
16 "had Deputy Homes cite [Plaintiff] for PC 148(a)(1)-obstructing a peace officer." (*Id.* ¶ 34.)

17 **B. The subpoenas**

18 Defendants in this case have propounded seven identical subpoenas on the employers  
19 Plaintiff identified in his initial disclosures. (Joint Ltr., Dkt. No. 31. at 1.) The subpoenas  
20 command production of:

21 All records, including all electronically stored information, relating to  
22 employment, including but not limited to:

23 A. Personnel records including employment application/resume, performance  
evaluations, records of disciplinary action, disability claims, workers  
compensation claims, and medical records pertaining to the individual's  
employment.

24 B. Payroll records including salary, wages, commissions or other  
remuneration paid or held by the employer, W-2 forms, time sheets and  
records of time off the job and reasons therefore, including sick leave and  
vacation.

25 All records, including all electronically stored information, relating to  
26 insurance, including but not limited to insurance claim information, medical  
insurance records, medical bills paid, medical records and medical insurance

1 coverage.

2 Any and all records pertaining to Juventino Rodarte (DOB . . . ), related to  
3 any employment by you, including without limitation employment applications,  
4 resumes, references, proof of citizenship/employability in the United States, W-2s,  
5 dates of employment, pay stubs or other records of payment, health insurance,  
6 performance evaluations and reviews, illnesses, vacation time, sick time, worker's  
7 compensation claims, job duties, job descriptions, types of work performed, skills,  
8 union affiliation, hours worked, wage or salary information, for the entire period of  
9 his employment with you, including to the present if he is presently employed by  
10 you.

11 (Joint Ltr., Ex. A.) Plaintiff seeks an order quashing the seven employment subpoenas. (*Id.*) He  
12 argues that Plaintiff's immigration status is not relevant to the subject matter of this case, and that  
13 the subpoenas are overbroad and oppressive and constitute an undue burden. (Joint Ltr. at 3.)  
14 Defendants contend that information regarding Plaintiff's ability to be lawfully employed in the  
15 United States is relevant to his prayer for damages based on diminished earning capacity or future  
16 lost earnings. (*Id.* at 3, 6.) Defendants maintain that "[t]here is no issue of depriving [P]laintiff of  
17 a remedy. Rather, [D]efendants seek information relevant to how that remedy lawfully may be  
18 measured." (*Id.* at 9.)

## 19 II. LEGAL STANDARD

20 Federal Rule of Civil Procedure 45 governs discovery propounded by subpoena. The  
21 scope of discovery that can be requested through a subpoena under Rule 45 is the same as the  
22 scope of discovery permitted under Rule 26(b). Fed. R. Civ. P. 45 advisory committee note  
23 ("[T]he scope of discovery through a subpoena is the same as that applicable to Rule 34 and other  
24 discovery rules."); Fed. R. Civ. P. 34(a) ("A party may serve on any party a request within the  
25 scope of Rule 26(b)."). Rule 26(b) permits discovery of "any nonprivileged matter that is relevant  
26 to any party's claim or defense." Fed. R. Civ. P. 26(B)(1). "Relevant information need not be  
27 admissible at trial if the discovery appears reasonably calculated to lead to the discovery of  
28 admissible evidence." *Id.*

29 A party may move to quash or modify a subpoena under Rule 45(d)(3)(A). The rule  
30 provides that "[o]n timely motion, the court for the district where compliance is required must  
31 quash or modify a subpoena that . . . (iii) requires disclosure of privileged or other protected  
32 matter, if no exception or waiver applies; (iv) or subjects a person to undue burden. *Id.* The party

1 moving to quash a subpoena bears the burden of persuasion, but the party issuing the subpoena  
2 must demonstrate that the discovery sought is relevant. *Personal Audio LLC v. Togic Entm't*, No.  
3 14-mc-80025 RS (NC), 2014 WL 1318921, at \*2 (N.D. Cal. Mar. 31, 2014).

### 4 III. DISCUSSION

5 As a preliminary matter, the Court notes that, at least in Title VII civil rights cases,  
6 discovery regarding a plaintiff's immigration status is generally prohibited, especially in the early  
7 stages of litigation. *See, e.g., Rivera v. NIBCO, Inc.*, 364 F.3d 1057, 1069-70 (9th Cir. 2004).  
8 Two reasons justify this approach. First, the immigration status of the plaintiff is not usually  
9 relevant to the issue of liability. *Id.* at 1069-70 ("The information NIBO seeks is not relevant to  
10 determining whether it has violated Title VII."). Second, permitting parties to use the discovery  
11 process to inquire into immigration status would have an unacceptable chilling effect on the  
12 bringing of civil rights actions, which would result in "countless acts of illegal and reprehensible  
13 conduct" going unreported. *Id.* at 1065.

14 In this § 1983 case, Plaintiff has not advanced any argument that these concerns are  
15 implicated here. Rather, his sole argument is that "discovery into his immigration status is  
16 unrelated to his present claim arising out of tort, and there is no particularize[d] suspicion based on  
17 his current and past employment for immigration status to be relevant." (Joint Ltr. at 8-9) He  
18 relies on *Clemente v. State*, 40 Cal. 3d 202 (1985) to support his position.<sup>2</sup>

19

---

20 <sup>2</sup> Plaintiff also relies on SB 1818, codified at California Civil Code section 3339, California  
21 Government Code section 7285, and California Labor Code section 1171.5. Section 3339  
provides, in pertinent part:

22 For purposes of enforcing state labor, employment, civil rights, and employee  
23 housing laws, a person's immigration status is irrelevant to the issue of liability, and  
24 in proceedings or discovery undertaken to enforce those state laws no inquiry shall  
be permitted into a person's immigration status except where the person seeking to  
make this inquiry has shown by clear and convincing evidence that this inquiry is  
necessary in order to comply with federal immigration law.

25 Because the Court concludes that permitting discovery into Plaintiff's immigration status, at this  
26 time, is improper for other reasons, the Court declines to address whether California Civil Code  
27 section 3339's prohibition on discovery into such matters in cases involving state labor,  
employment, civil rights, and employee housing laws precludes the discovery at issue in this case.  
28 The Court notes, however, that the statute does not appear to operate as a bar to that kind of  
discovery with respect to claims based on federal laws. Furthermore, to the extent that Plaintiff  
believes the California Supreme Court's anticipated decision in *Salas v. Sierra Chemical Co.* may  
have some bearing on the discovery at issue here, he is free to advance that argument at a later

1       In *Clemente*, the plaintiff suffered severe injuries when he was struck by a motorcyclist.  
2 40 Cal. 3d at 209. The motorcyclist was never apprehended, and the plaintiff sued the State of  
3 California and the Highway Patrol Officer for negligence. *Id.* The plaintiff alleged that the officer  
4 was negligent in failing to ascertain the identity of the motorcyclist, whose information the officer  
5 did not obtain before he left the scene. *Id.* at 210. The plaintiff prevailed at trial and obtained a  
6 judgment of \$2,150,000.21. *Id.* at 209. One of the issues raised on appeal was whether the trial  
7 court improperly excluded testimony from the plaintiff's wife regarding his citizenship. *Id.* at 221.  
8 The defendants argued that such evidence was relevant to the plaintiff's claim for future loss of  
9 earnings. *Id.* The court concluded:

10       We cannot say that in the instant case the trial court erred in refusing to permit  
11 questioning of plaintiff's wife regarding her husband's citizenship. Plaintiff had  
12 been gainfully employed in this country prior to his two accidents, there was no  
13 evidence that he had any intention of leaving this country and the speculation that  
14 he might at some point be deported was so remote as to make the issue of  
15 citizenship irrelevant to the damages question. The trial court properly concluded  
16 that the plaintiff's wife was probably incompetent to testify to her husband's legal  
17 status in this country and that such testimony, even if marginally relevant, was  
18 highly prejudicial.

19       *Id.*

20       Defendants claim that Plaintiff misrepresents the holding in *Clemente*. (Joint Ltr. at 9.)  
21 They assert that *Clemente* does not stand for the proposition that discovery on employability in the  
22 United States is barred.<sup>3</sup> (*Id.* at 10.) They maintain that Plaintiff's immigration status is relevant  
23 to his claim for future lost income and that precluding such discovery would prejudice them. To  
24 that end, Defendants argue that Plaintiff's claim that there is no evidence or particularized  
25 suspicion that plaintiff is not legally entitled to work in this country is entirely self-serving. (*Id.*)  
26 According to Defendants, their attorney asked Plaintiff's counsel whether Plaintiff "was legally  
27

---

28 date.

25       <sup>3</sup> Defendants also contend that *Clemente* did not overrule *Metalworking Machinery, Inc. v.*  
26 *Superior Court of Los Angeles*, 69 Cal. App. 3d 791 (1977). Even so, the court in *Metalworking*  
27 *Machinery, Inc.*, summarily concluded that discovery requests for the plaintiff's immigration status  
28 were "clearly relevant to the subject matter of the action as framed by the pleadings, and . . .  
[were] likely to lead to the discovery of admissible evidence." Thus, Defendants' reliance on the  
case is misplaced, and the *Clemente* court's treatment of the case is irrelevant.

1 entitled to work in the U.S." and "Plaintiff's counsel would not respond." (*Id.* at 9, 10.)

2 In support of their position, Defendants rely on three cases, *Heiner v. Kmart Corp.*, 84 Cal.  
3 App. 4th 335, 345 (2000),<sup>4</sup> *Rodriguez v. Kline*, 186 Cal. App. 3d 1145 (1986), and *Romero v. Cal.  
4 Highway Patrol*, No. C05-03014 MJJ, 2007 U.S. Dist. LEXIS 14517 (N.D. Cal. Feb. 14, 2007).  
5 In *Rodriguez*, the issue before the court of appeal was "whether a person who is within this  
6 country illegally is entitled to be compensated for his personal injuries based upon his projected  
7 earning capacity in (1) the United States or (2) the country of his lawful citizenship." 186 Cal.  
8 App. 3d at 1157. In that case, the plaintiff had conceded that he was an illegal alien. *Id.* 1151 n.1.  
9 The court concluded that when the citizenship of a plaintiff who prays for recovery of lost future  
10 earnings is challenged, the defendant will first have to produce proof that the plaintiff is an alien  
11 subject to deportation, and the plaintiff will have to bear the burden to show that that he has taken  
12 steps to correct the "deportable condition." *Id.* at 1149. The court noted that "[a] contrary rule, of  
13 course, would allow someone who is not lawfully available for future work in the United States to  
14 receive compensation to which he is not entitled." *Id.* (citation omitted).

15 In *Romero*, the court addressed a renewed motion to compel (1) responses to deposition  
16 questions regarding the plaintiff's immigration status, (2) enforcement of a subpoena *duces tecum*  
17 that sought information about the plaintiff's immigration status from his employer, and (3)  
18 responses to interrogatories regarding the plaintiff's plans to return to work in his country of  
19 origin. 2007 U.S. Dist. LEXIS 14517, at \*2. The court had previously entertained a dispute  
20 regarding the same discovery, and in the order resolving that dispute, the court stated: "Should  
21 Plaintiff's § 1983 claim survive summary judgment, Defendant may, at that time, renew its Motion  
22 to Compel discovery regarding Plaintiff's immigration status." *Id.* (internal quotations and citation  
23 omitted.) In ruling on the renewed motion, the court determined that information about the  
24 plaintiff's immigration status was relevant to his claim for past and future lost wages. *Id.* It also  
25 found that because the trial in the case was to begin in a matter of weeks, the defendant's interest  
26 in obtaining the information outweighed the plaintiff's interest in non-disclosure of clearly relevant  
27

---

28 <sup>4</sup> Defendants apparently rely on *Heiner* only because it cites *Rodriguez* with approval. For this reason, the Court does not discuss *Heiner* separately.

1 discovery. *Id.* at \*3.

2 The Court agrees that *Clemente* does not squarely prohibit all discovery on matters  
3 concerning a plaintiff's immigration status. *See* 40 Cal. 3d at 221. *Rodriguez* lends support to  
4 such a reading.<sup>5</sup> *See* 186 Cal. App. 3d at 1149. At this time, however, information about  
5 Plaintiff's immigration status is, at best, marginally relevant to Plaintiff's claim for a specific type  
6 of damages. It is certainly not relevant to the issue of liability, and to the extent that the liability  
7 issue is ultimately disposed of on a motion for summary judgment, any inquiry into Plaintiff's  
8 immigration status would be unnecessary. In this respect, at this stage in the case, the marginal  
9 relevance of this information makes any burden imposed by the subpoenas undue. *See, e.g.*,  
10 *Rivera*, 364 F.3d at 1066 (concluding "that discovery of each plaintiff's immigration status  
11 constitutes a substantial burden, both on the plaintiffs themselves and on the public interest in  
12 enforcement of Title VII and FEHA").

13 For this reason, the Court adopts the approach set out in *Romero*. If this case progresses  
14 beyond the summary judgment stage, the parties may revisit the issue of Plaintiff's immigration  
15 status. *See* 2007 U.S. Dist. LEXIS 14517, at \*2. If, at that time, the parties are unable to resolve  
16 the issue on their own, they may file another joint discovery letter. In the interim, the seven  
17 subpoenas Defendants propounded on Plaintiff's employers are quashed.

18 **IV. CONCLUSION**

19 For the reasons set forth above, the subpoenas are quashed. The parties shall serve a copy  
20 of this order on each subpoenaed employer.

21 **IT IS SO ORDERED.**

22 Dated: June 18, 2014

23   
24 KANDIS A. WESTMORE  
United States Magistrate Judge

25  
26  
27  
28 <sup>5</sup> As previously indicated, the Court declines to address whether SB 1818, as codified, overrules  
these authorities.